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Project No. 713

March 5, 2002

U.S. Nuclear Regulatory Commission  
Attn: Document Control Desk  
Washington, DC 20555

Subject: Withdraw and Re-submittal of the Pebble Bed Modular Reactor Core Design and Heat Removal Presentation Material and the Design and Heat Removal Preliminary Description Document

Reference: Letter from Exelon Generation Company to USNRC dated August 13, 200, "Application for Withholding Information from Public Disclosure."

Letter from Exelon Generation Company to USNRC dated November 16, 2001, "Application for Withholding Information from Public Disclosure."

Letter from USNRC to Exelon Generation Company dated February 6, 2002, "Request for Withholding Information from Public Disclosure, Exelon Generation Letter of November 16, 2001."

In accordance with 10 CFR 2.790 "Public inspections, exemptions, requests for withholding," paragraph (c), Exelon Generation Company (EGC), LLC requests the withdraw of documents contained in our letters to the NRC dated August 13, 2001 and November 16, 2001 referenced above. Specifically, the documents to be withdrawn are the "PBMR Core Design" and "PBMR Heat Removal" presentations, and the "PBMR Design and Heat Removal Preliminary Description," document number 010302-425, revision 1, and "PBMR Nuclear Fuel," document No. 010520-425, revision 1.

In addition, EGC has updated information contained in the documents regarding their proprietary position and is submitting proprietary and non-proprietary (i.e., redacted) versions of the "PBMR Design and Heat Removal Preliminary Description" (Attachment 1 and Attachment 4 respectively), "PBMR Core Design" presentation materials (Attachment 2 and Attachment 5 respectively), and "PBMR Heat Removal" presentation materials (Attachment 3 and Attachment 6 respectively).

Portions of Attachments 1, 2, and 3 are requested to be withheld from public disclosure on the grounds that these portions contain information in the nature of trade secrets and commercial or financial information that is confidential. We consider, however, that

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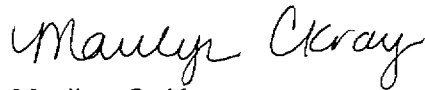
pre-application discussion of this information with NRC will be beneficial to the NRC's understanding of the PBMR core design and heat removal systems, and this type of discussion is consistent with the NRC's Policy on Advanced Reactors, NUREG 1226 "Development and Utilization of the NRC Policy Statement on the Regulation of Advanced Nuclear Power Plants." This will allow the NRC to provide early input to us regarding attributes of these activities, which are considered important to the NRC.

We have enclosed an application and affidavit for withholding information from public disclosure pursuant to 10 CFR 2.790 (a) (4) regarding this information.

At a later date, EGC will provide updated proprietary and redacted versions of the withdrawn "PBMR Nuclear Fuel," document along with corresponding versions of the presentation material submitted to the NRC via a letter dated June 12, 2001.

If you have any questions concerning this matter, please do not hesitate to contact us.

Sincerely,



Marilyn C. Kray  
Vice President, Special Projects

Enclosures: Affidavit  
Attachments

cc: Farouk Eltawila, Office of Nuclear Reactor Research  
James Lyons, Office of Nuclear Reactor Regulation  
John Flack, Office of Nuclear Reactor Research  
Amy Cubbage, Office of Nuclear Reactor Regulation  
Stuart Rubin, Office of Nuclear Reactor Research

Affidavit of Marilyn C. Kray

Commonwealth of Pennsylvania:

: ss.

County of Chester

:

Marilyn C. Kray being duly sworn, deposes and states as follows:

1. I am Vice President, Special Projects, Exelon Generation Company, L.L.C. (Exelon), and I am authorized to execute this affidavit in support of a request to withhold certain information, described in paragraph (2) below, from public disclosure and in accordance with Section 2.790(a)(4) of the Commission's regulations.
2. The information sought to be withheld is contained in the letter, M. C. Kray (Exelon Generation Company, L.L.C.) to the U. S. Nuclear Regulatory Commission Document Control Desk, Project No. 713.
3. The information which is sought to be withheld from public disclosure is proprietary information of Pebble Bed Modular Reactor (Pty) Limited, a Republic of South Africa corporation ("PBMR Co"), and has been provided to Exelon subject to an agreement that it will be treated as confidential and proprietary information and not be disclosed publicly. Exelon has contributed substantial funds for the development of the information and holds a beneficial ownership interest in PBMR Co.
4. In making this application for withholding of proprietary information, Exelon relies upon the exemption from disclosure set forth in the Freedom of Information Act ("FOIA"), 5 USC Sec. 552(b)(4), and the Trade Secrets Act, 18 USC Sec. 1905, and NRC regulations 10 CFR Section 9.17(a)(4) and Section 2.790(a)(4) for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." The material for which exemption from disclosure is here sought is all "confidential commercial information," and some portions also qualify under the narrower definition of "trade secret," within the meanings assigned to those terms for purposes of FOIA Exemption 4 in, respectively, Critical Mass Energy Project v. Nuclear Regulatory Commission, 975F2d871 (DC Cir. 1992), and Public Citizen Health Research Group v. FDA, 704F2d1280 (DC Cir. 1983).
5. Some examples of categories of information which fit into the definition of proprietary information and which are applicable here are:
  - a) Information that discloses a process, method, or apparatus, including supporting data and analyses, where prevention of its use by the Company's competitors without license from Exelon Generation Company, L.L.C. constitutes a competitive economic advantage over other companies;

- b) Information which, if used by a competitor, would reduce his expenditure of resources or improve his competitive position in the performance of outages or the design, manufacture, shipment, installation, assurance of quality, or licensing of a similar product.
6. The information sought to be withheld is being submitted to the U. S. Nuclear Regulatory Commission ("NRC") in confidence. The information is of a sort customarily held in confidence by Exelon, and is in fact so held. Its initial designation as proprietary information, and the subsequent steps taken to prevent its unauthorized disclosure, are as set forth in (7) and (8) following. The information sought to be withheld has, to the best of my knowledge and belief, is not available in public sources. All disclosures to third parties including any required transmittals to NRC, have been made, or must be made, pursuant to regulatory provisions or proprietary agreements which provide for maintenance of the information in confidence.
  7. Initial approval of proprietary treatment of a document is made by the Vice President, Special Projects, the person most likely to be acquainted with the value and sensitivity of the information in relation to industry knowledge.
  8. The procedure for approval of external release of such a document typically requires review by a Vice President, Exelon Generation, or her/his designee, for technical content, competitive effect, and determination of the accuracy of the proprietary designation. Disclosures outside Exelon Generation Company, L.L.C. are limited to regulatory bodies, customers, and potential customers, and their agents, suppliers, and licensees, and others with a legitimate need for the information, and then only in accordance with appropriate regulatory provisions or proprietary agreements.
  9. The information identified in paragraph (2) is classified as proprietary because it contains core design and heat removal information related to the Pebble Bed Modular Reactor (PBMR).
  10. Public disclosure of the information sought to be withheld is likely to cause substantial harm to Exelon's and others contributing to the PBMR Project competitive position and foreclose or reduce the availability of profit-making opportunities. The core design and heat removal issues related to the PBMR provide commercial value to Exelon and its partners. The research, development, engineering, analytical, and NRC review costs comprise a substantial investment of time and money by Exelon and its partners.

Exelon's and its partners' competitive advantage will be lost if its competitors are able to use the design information.

The value of this information would be lost if the information were disclosed to the public. Making such information available to competitors without their having been required to undertake a similar expenditure of resources would unfairly provide competitors with a windfall, and deprive Exelon of the opportunity to exercise its competitive advantage to seek an adequate return on its large investment.

11. She has read the foregoing affidavit and the matters stated therein are true and correct to the best of her knowledge, information and belief.

Marilyn C. Kray  
Marilyn C. Kray

Subscribed and sworn to  
before me this 5<sup>th</sup> day  
of March 2002.

Vivia V. Gallimore

Notary Public

Notarial Seal  
Vivia V. Gallimore, Notary Public  
Kennett Square Boro, Chester County  
My Commission Expires Oct. 6, 2003  
Member, Pennsylvania Association of Notaries